IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF VIRGINIA LYNCHBURG DIVISION

Defendant.) SUMMARY JUDGMENT
a Minnesota Corporation,) PROPOSED ORDER) FOR
DAVIS-FROST, INC.,)
v.) Case No. 6:21-cv-00027-NKM
Plaintiff,)
FREIGHTCAR AMERICA, INC., a Delaware Corporation,)

The above-captioned matter came before the Honorable Norman K. Moon of the United States District Court for the Western District of Virginia upon Defendant Davis-Frost, Inc.'s ("Davis-Frost") Motion for Summary Judgment seeking judgment on Plaintiff FreightCart America, Inc. ("FCA")'s Counts I through V of its Complaint.

Having reviewed the pleadings, the evidence, the applicable legal authority and arguments of counsel for the parties,

IT IS HEREBY ORDERED that:

1. The Court finds the undisputed material facts demonstrate that FCA overapplied the Mineral Brown paint in excess of Davis-Frost's specifications thereby causing the complained of blistering of the Mineral Brown paint on the steel railcars. Therefore, as a matter of law, the Court finds Davis-Frost did not breach the Warranty, Purchase Order and/or any

implied warranties. For this reason, this Court enters judgment in favor of

Davis-Frost and against FCA on Counts I through IV.

2. In the alternative, to the extent this Court determines liability, if any, on

Counts I through IV, this Court as a matter of law finds the express language

of the Warranty limits FCA's recoverable damages to "reasonable costs

associated with the application thereof not to exceed \$5,000 less the actual

cost of material per railcar."

3. Further, in the alternative, to the extent this Court determines liability, if any,

on Counts I through IV, as a matter of law, this Court finds Davis-Frost has

proven FCA did not mitigate it damages and therefore FCA's recoverable

damages cannot exceed \$1,159,611.

4. In Count V of FCA's Complaint for Violation of the Illinois Consumer Fraud

and Deceptive Business Practices Act, 815 ILCS 505/2, the Court finds the

undisputed facts demonstrate FCA is barred from asserting this claim, has no

standing under the Act and there is no evidence of any deceptive acts.

Accordingly, as a matter of law, this Court enters judgment in favor of Davis-

Frost and against FCA on Count V.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated:	
	Norman K. Moon
	United States District Judge